

BEFORE THE FEDERAL ELECTION COMMISSION

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COMMISSION
OFFICE OF GENERAL
COUNSEL

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In the matter of:

Democratic State Central Committee of California
(a.k.a. California Democratic Party)
FEC ID Number C00105668

Friends of Lois Capps
FEC ID Number C00331389

MUR # 4788

COMPLAINT

The California Republican Party (CRP), by and through its Chairman, Michael Schroeder, brings this complaint pursuant to 2 U.S.C. section 437g(a)(1). Mr. Schroeder and the CRP may be reached at 1903 West Magnolia Blvd., Burbank, California 91506, (818) 841-5210.

I. SUMMARY

The Democratic State Central Committee of California (a.k.a. the California Democratic Party (CDP)) made at least \$99,079.06 in illegal expenditures on behalf of the Friends of Lois Capps Committee, a committee supporting Congressional candidate Lois Capps, including spending \$77,281.67 in unlawful "soft money" on Capps' special election campaign. Specifically, CDP unlawfully paid for three or more direct mail pieces that expressly advocated Ms. Capps' election in the March 10, 1998, special election in the 22nd Congressional District of California, without regard to federal contribution limits or source restrictions. Around the same time these expenditures were made by CDP, the Commission unanimously confirmed that identical expenditures proposed by the Republican Party of New Mexico would be

unlawful. With neither the facts nor the law in question, the Commission should be able to resolve this matter quickly and at little taxpayer expense.

II. FACTS AND DISCUSSION

On May 21, 1998, the FEC unanimously approved Advisory Opinion No. 1998-9, which confirmed that a Republican Party of New Mexico brochure urging voters to "Continue the Steve Schiff Tradition" and "Vote Republican [in the] Special Election, Tuesday, June 23" would "constitute express advocacy of a clearly identified candidate" subject to federal contribution limits and source restrictions. (See FEC Advisory Opinion 1998-9 at p. 5; enclosed.) Federal law limits contributions made by a political party to a Congressional candidate to \$5,000 per election. (2 U.S.C. §441a(2)(a).) In addition, a party's contributions to a candidate must not come from "soft money" funds -- funds which include prohibited sources such as labor unions and corporations; rather, contributions must come from a party's federal account funds. (2 U.S.C. §441b(a); 2 U.S.C. §441a(d)(3)(B); 11 CFR 110.7(b)(2)(ii).)

Federal law allows political parties to make expenditures urging voters to "Vote Republican" or "Vote Democratic on [date]," using a combination of federal account funds (subject to federal contribution limits and source restrictions) and state account funds (not subject to federal contribution limits and source restrictions in campaigns where both federal and state candidates appear on the ballot). Such expenditures are referred to as "generic voter drive" costs because they do not expressly advocate the election or defeat of a clearly identified candidate. (2 U.S.C. §431(18); Buckley v. Valeo (1976) 424 U.S. 1.) However, when the party has only one federal candidate on the ballot, as in a special election, the candidate is necessarily "clearly identified" and the party must finance these expenditures exclusively out of federal funds. (FEC Advisory Opinion 1989-9 at p. 3.) The FEC has said:

"...a candidate is clearly identified if her name or likeness appears or if her identity is apparent by unambiguous reference. 2 U.S.C. §431(18); 11 CFR 100.17. Since there is only one office at stake in the June 23

election and only one Republican on the ballot, the communication can mean no other candidate but the Republican nominee in the June 23 special election for the House seat from the First District of New Mexico."

(FEC Advisory Opinion 1989-9 at p. 4.)

In March 1998, CDP mailed at least three mail pieces urging voters to "Continue the Walter Capps Tradition" and "Vote Democratic [in the] Special Election, Tuesday, March 10." (See enclosed copies of CDP mailings.) There was only one partisan election in California on March, 10, 1998 -- in the 22nd Congressional District. Under the law interpreted by the Commission just two months subsequent, these CDP mailings "constitute express advocacy on behalf of a clearly identified candidate." As such, the production and mailing costs incurred by the CDP represent a contribution to Lois Capps subject to federal contribution limits and source restrictions. The amount spent by CDP for these mailers, \$99,079, far exceeds the \$5,000 limit. In addition, the CDP primarily used "soft money" to finance the mailers when the law requires the party to use only federal account funds.

In its pre-primary FEC report, the CDP reported paying for the following expenses:

| <u>DATE</u> | <u>PAYEE (REPORTED PURPOSE)</u> | <u>TOTAL</u> | <u>"Soft Money"</u> | |
|-------------|---|--------------------|---------------------|--------------------|
| | | | <u>Non-Federal</u> | <u>Federal</u> |
| 2/25/98 | Gutierrez & Assoc. (generic voter contact) | \$ 9,800.00 | \$ 7,644.00 | \$ 3,156.00 |
| 2/27/98 | Crumac & Malchow (generic voter contact) | \$86,250.00 | \$67,275.00 | \$18,975.00 |
| 3/13/98 | Gutierrez & Assoc. (production costs for voter contact) | \$ 3,029.06 | \$ 2,362.67 | \$ 666.39 |
| | | <u>\$99,079.06</u> | <u>\$77,281.67</u> | <u>\$22,797.39</u> |

Upon information and belief, the payees noted above are direct mail consultants and the entries represent payments for the attached CDP mailings. These mailings are not independent expenditures, since the disclaimers are not consistent with independent expenditures and CDP did not report them as such (as would have been required). It is also clear that these mailings were neither exempt party activities¹ nor

¹ If they were exempt party mailings they would surely have urged voters to "Vote for Lois Capps March 10." By contrast, CDP tried to allude to Ms. Capps without clearly identifying her. Their efforts failed, according to the Commission's logic as outlined in the New Mexico Republican Advisory Opinion. More importantly, no 100

"issue advertisements" (since they contain clear express advocacy to "Vote"). However, even if the disbursements were "independent expenditures," they still would have to be financed solely with federal account funds. (See FEC Advice Opinion 1989-9 at p. 4.)


III. PRAYER FOR RELIEF

In light of the unanimous Commission finding in FEC Advice Opinion 1989-9, where the facts were identical to those presented in this complaint, it is clear that CDP's mailings violated federal law. The excessive contribution violation -- totaling at least \$99,079.06 (including \$77,281.67 in illegal soft money) -- must be immediately refunded by the Capps for Congress Committee to the CDP. In addition, the Commission should conduct appropriate investigations to determine the full extent of coordination between the candidate and party with regard to these mailings, their actual costs, and whether any further "generic voter contacts" were unlawfully made. Appropriate sanctions should be imposed to deter future violations of the Act by the Capps campaign or CDP.

Respectfully Submitted,


Witness:

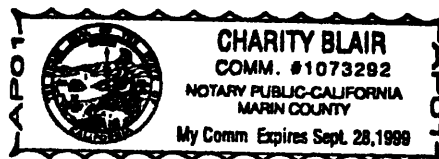

Chair, California Republican Party


Brenda Wise

State of California

Signed and sworn to before me this 16 th day of August, 1998.

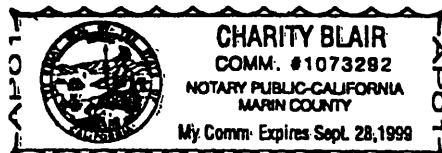

NOTARY PUBLIC
My commission expires: 9/28/99

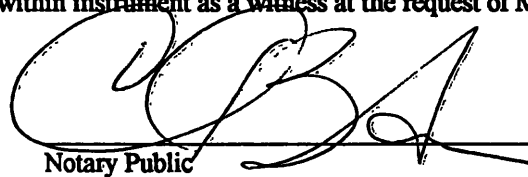


percent federal expenses appear on the CDP report that would be consistent with payment for these mailings.

State of California)
County of Marin) ss

On August 4, 1998, before me, the undersigned, a notary public for the state, personally appeared Brenda Wise, personally known to me to be the person whose name is subscribed to the within instrument, as a witness thereto, who, being by me duly sworn, deposes and says that she was present and saw Michael Schroeder, the same person described in and whose name is subscribed to the within and annexed instrument as a party thereto, execute the same, and that said affiant subscribed his name to the within instrument as a witness at the request of Michael Schroeder.




Notary Public